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Volume 26 | Issue 4

Article 6

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June 1920

## Unwholesome Competition

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### Recommended Citation

L. C., *Unwholesome Competition*, 26 W. Va. L. Rev. (1920).

Available at: <https://researchrepository.wvu.edu/wvlr/vol26/iss4/6>

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except oil and gas leases? It is submitted there is no sound reason why a delay rental provision should not be fully enforced against the lessee so long as there is no drainage.

In conclusion, it is submitted that the doctrine that the lessor may compel the lessee to develop notwithstanding the fact he has by contract given the lessee an option to pay money in lieu of development is unsound, and that such a provision should be held valid and binding on the lessor and that there should be no implications contrary to the delay rental clause at least so long as there is no drainage of the oil and gas from the land. It is further submitted that if these delay rental clauses are considered detrimental to the public, courts ought to declare them void. As the matter now stands in West Virginia it is difficult to tell whether a delay rental provision is valid or void. The cases of *Wilson v. Reserve Gas Company* and *Johnson v. Armstrong* merely asserted the doctrine under discussion and did not enforce it by a decree in aid of a forfeiture after due notice to the lessee to develop, and therefore contain little more than dicta. On the other hand the Carper Case is, in so far as it goes, an actual decision that so long as there is no drainage there can be no implied duty on the lessee inconsistent with the delay rental provision of the lease. This seems not only sound on principle but also states a definite rule which parties can understand and use as a guide in future dealings.

—J. W. S.

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UNWHOLESOME COMPETITION.—It has been said that so long as there are shyster clients there will be shyster lawyers. Such an utterance, of course, carries with it the implication that people get what they want, and, therefore, what they deserve—a process of let dog eat dog not so deplorable if the public in general could be protected by some method of segregation. However this may be, it frequently has occurred to the writer that a lack of legitimate clients offers a very fertile field in which to evolve both shyster lawyers and shyster clients. Every farmer knows that if the crop is too thin the weeds will smother it; and this result is entirely consistent with the fact that a few giant oaks may spread their circumferences so high above the smaller vegetation that they may ignore their environment. The central thought has

recently been recalled by a comment in the *Journal of the American Judicature Society*:<sup>1</sup>

“As long as there are too many lawyers and hence too severe competition, some will be driven to improper practices. To get rid of moral overstrain from this source it is necessary to impose limits upon the number who enter the profession. This is being done in a few states, and with great success. When there are too many lawyers competition may result in the survival of the unfit.”

There is no doubt that excessive competition at the bar discourages many potentially capable lawyers from entering the profession and at the same time induces others to enter with little appreciation of the nature and seriousness of the responsibilities which they should assume. A fair parallel exists in politics, where many of the most conscientious and capable refuse to surrender themselves to the sordid methods which they believe necessary in order to give their services to their fellowmen. The natural result of a competition which involves public patronage or a clientele is a temptation to advertise, understanding the term “advertise” in a broad sense of consciously undertaking to place oneself before the public. In its more obvious and restricted sense, professional advertising has long and uniformly been condemned. But nevertheless the exigencies of competition have fostered and encouraged it in another and insidious form which it is believed distorts the fundamental concept and true ideals of the profession.

It is problematical how many undertake preparation for a profession primarily on the ground that they are peculiarly and inherently fitted for it. Certainly the number is not small. Formerly it was thought by too many that a young man had no right to entertain pretensions toward the legal profession unless he had displayed more or less ability in the art of verbal persuasion. There is no small tendency to look upon the profession as an art, rather than as a science. The demands of modern business have properly changed all that; but it may well be deplored that the modern concept of the profession did not resolve itself more uniformly along different lines. The recent tendency is to regard the law as a business, rather than as the profound science which it is. When an inventory is taken of the prospective lawyer's qualifi-

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<sup>1</sup>Sanitation of the Bar, 4 *JOURNAL OF THE AMERICAN JUDICATURE SOCIETY*, 5, 13.

cations, there is too great an inclination to inquire into his capacity to get clients and too little emphasis given to his ability to serve them. In popular phrase, the modern lawyer must be a "good mixer," which means that he must be a good advertiser. not of his professional capabilities, but of his personality. Such a concept is bound to lead to superficiality and to impair the worth and dignity of the profession. It involves a false standard, which serves as a basis for the false hopes of those who are inherently unfitted; it is the voice of a siren, which lures even the competent away from the strenuous effort inevitably necessary for true accomplishment in legal education; it enervates and dissipates the energies of practitioners. If a lawyer must *seek* clients, it may be worth inquiring whether his legitimate clients' interests would not be better served if he should shun the devious pathways to popular ingratiating and unblushingly surrender himself to open advertising. Thus he could employ his personality in the discharge of his professional duties and his advertising would be taken for what it truly is. There is little doubt that the personalities displayed by some of the so-called "mixers", who may be termed superficial lawyers, impair the dignity of the profession fully as much as the boldness of the most brazen advertiser.

After all this has been said, a discouraging fact must be admitted. Under present conditions, even the most conscientious are confronted with a temptation, which is recognized almost as a necessity, to seek clients by way of intruding their personalities upon the public in many devious ways rather than by relying upon their professional abilities. A man may have all the professional qualifications and all the personality necessary to make a great lawyer, yet he trembles when it is suggested that he must meet an unholy, scrambling competition and that he will never succeed, or will succeed slowly, unless he develops the qualities of a "good mixer." He trembles because he fully realizes that the elements involved in this competition are not those which conduce to professional growth and power, but rather are stifling in effect. The remedy is to reduce competition—for the sake of the profession, of the members of the profession, and especially of the public—and no better method has been suggested than raising standards. A mature member of the profession, who likely acts as counsel in the majority of the cases in his locality, some time ago remarked to the writer that he welcomed a new lawyer into the community

because he created more business. It may be a great thing for humanity to make two blades of grass grow where only one grew before, but the same can not be true of litigants. Clients should not be created, but served; and lawyers should not be under the necessity of seeking clients. The true lawyer needs all his time and energy for service. The poorly prepared superficial lawyer will be found to be the most adept "creator of business."

—L. C.

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NEW MEMBER OF LAW FACULTY.—Mr. George Edward Osborne has been appointed assistant professor of law at West Virginia University to fill the vacancy caused by the resignation of Mr. David C. Howard, of the Charleston Bar, who resigned at the close of the year 1917-1918. Mr. Osborne is a graduate of the college department of the University of California and studied law at the Harvard Law School from which he has received successively the degrees of Bachelor of Laws and Doctor of Law. He is the author of numerous contributions to legal periodicals, and was for one year an associate editor, and for a second year Editor-in-Chief of the Harvard Law Review. He has also been associate counsel for the Legal Aid Society in Cambridge, Massachusetts. Because of his successful experience in legal and editorial work he will give special attention to the WEST VIRGINIA LAW QUARTERLY in addition to his teaching duties. Mr. Osborne's appointment will strengthen the law faculty and will do much to improve the LAW QUARTERLY.